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**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

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Edh

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/163,089	09/29/98	MCKENZIE	I 4102-1

022442
SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER CO 80202

HM22/0608

EXAMINER

ZEMAN, R

ART UNIT	PAPER NUMBER
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1645

17

DATE MAILED:

06/08/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/163,089

Applicant(s)
McKenzie et al.

Examiner
Robert A. Zeman

Art Unit
1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 14, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-22, 24-46, and 48-51 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-17, 19-22, 24-46, and 48-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

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DETAILED ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1645.

Claims 1-17, 19-22, 24-46 and 48-51 are pending in this application.

Upon review and reconsideration of the entire record, the finality of the last Office action is withdrawn. It is noted that a restriction/election of species was previously made in Paper No. 10 mailed on 6-5-2000; however, on review and reconsideration of the entire record, the requirement is revised as follows:

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 3-17, 19-21, 24-26, 38 and 70 drawn to an immunoregulatory composition comprising manose receptor-bearing cells, a polymer of fully oxidized mannose, biological response modifiers and an antigen, classified in class 424, subclass 93.1.
- II. Claims 1, 3-7, 12-17, 19-21, 26, 38 and 70, drawn to an immunoregulatory composition comprising manose receptor-bearing cells, a polymer of fully oxidized mannose and an antigen, classified in class 424, subclass 93.1.

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- III. Claims 1-17, 19-22, 24-26, 38 and 70 drawn to an immunoregulatory composition comprising manose receptor-bearing cells, a polymer of partially reduced mannose, biological response modifiers and an antigen, classified in class 424, subclass 93.1.
- IV. Claims 1-7, 12-17, 19-22, 26, 38 and 70 drawn to an immunoregulatory composition comprising manose receptor-bearing cells, a polymer of partially reduced mannose and an antigen, classified in class 424, subclass 93.1.
- V. Claims 27-37, drawn to immunoregulatory mannose receptor-bearing cells, classified in class 435, subclass 372.
- VI. Claims 39-46 and 48-51, drawn to methods of obtaining immunoregulatory mannose receptor-bearing cells, classified in class 435, subclass 325.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-V are separate and distinct from each other as they each comprise completely differing biochemical and immunological entities having differing properties and uses. Each invention is drawn a unique composition.

Inventions I-IV are separate and distinct from Invention VI since the compositions of Inventions I-IV cannot be used in the methods of Invention VI.

Inventions V and VI are related as product and process of making. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be

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made by another and materially different process (MPEP § 806.05(f)). In the instant case the cells of Invention V can be obtained using adherence purification techniques.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

This application contains claims directed to the following patentably distinct species of the claimed invention: the antigens listed in claim 12.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.


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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can be reached between the hours of 7:30 am and 4:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Donna Wortman, Primary Examiner can be reached at (703) 308-1032 or the examiner's supervisor, Lynette Smith, can be reached at (703)308-3909.


DONNA WORTMAN
PRIMARY EXAMINER

Robert A. Zeman

June 7, 2001